



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 27 2010

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kevin Johnson
Stoel Rives LLP
33 South Sixth Street, Suite 4200
Minneapolis, Minnesota 55402

Dear Mr. Johnson:

I have enclosed a file stamped Consent Agreement and Final Order ("CAFO") and Administrative Order which resolves case docket number CAA-05-2011-0013 with the Red Wing Solid Waste Boiler Facility ("Red Wing SWBF"). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on DEC 27 2010

(BD#)
Pursuant to paragraph 32 of the CAFO, Red Wing SWBF must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, 2751103A011, and the billing.

Sincerely,

William MacDowell
Chief

Minnesota/Ohio Air Enforcement and Compliance Assurance Section

cc: Jeff T. Connell, Minnesota Pollution Control Agency

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Red Wing Solid Waste Boiler Facility
Red Wing, Minnesota

Respondent

) Docket No. **CAA-05-2011-0013**
)
) Proceeding to Assess a Civil Penalty under
) § 113(d) of the Clean Air Act, 42 U.S.C.
) § 7413(d)

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Consent Agreement and Final Order

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Preliminary Statement

1. This is an administrative action commenced and concluded under § 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Concerning the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (EPA).
3. Respondent is The Red Wing Solid Waste Boiler Facility (Red Wing SWBF), a municipal corporation owned by the City of Red Wing, Minnesota, doing business in Minnesota.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Red Wing SWBF admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.

8. Red Wing SWBF waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.
9. Red Wing SWBF certifies that it is complying fully with the Federal Plan Requirements for Small Municipal Waste Combustion (MWC) Units Constructed On or Before August 30, 1999, 40 C.F.R. 62, Subpart JJJ (hereinafter, the Small MWC FIP).
10. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.
11. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Statutory and Regulatory Background

12. Pursuant to Sections 111 and 129 of the Act, the Administrator promulgated the Small MWC FIP at 40 C.F.R. §§ 62.15000 through 15410. The Small MWC FIP applies to municipal waste combustion units with the capacity to burn between 50 and 250 tons of municipal solid waste (MSW) per day. A Small Class II MWC Unit is located at a MWC plant with aggregate plant combustion capacity less than or equal to 250 tons per day of MSW.
13. Pursuant to 40 C.F.R. § 62.15045(a) and Table 4 of the Small MWC FIP, the owner or operator of a Small Class II MWC Unit must achieve final compliance with the Small MWC FIP no later than May 6, 2005.
14. Pursuant to 40 C.F.R. § 62.15240(a), the owner or operator of a Small Class II MWC Unit must conduct the initial stack test no later than 180 days after the final compliance date.
15. Pursuant to 40 C.F.R. § 62.15160(a), after the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), the owner or operator of a Small Class II MWC Unit must comply with the following emission standards for cadmium and mercury set forth at 40 C.F.R. § 62.15160(a)(2) and Table 4 of the Small MWC FIP:
 - a. For cadmium, 0.10 milligram per dry standard cubic meter corrected to 7 percent oxygen (mg/dscm @ 7% O₂).
 - b. For mercury, 0.080 mg/dscm @ 7% O₂ or 85% reduction of potential mercury emissions.

16. Pursuant to 40 C.F.R. § 60.11(d), at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.
17. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever the Administrator finds, among other things, that any person has violated or is in violation of a requirement or prohibition of Title I of the Act, or any rule promulgated, issued or approved under Title I of the Act, other than a requirement or prohibition of an applicable implementation plan or permit.
18. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes civil penalties of up to \$25,000 per day for each violation of the CAA. The Debt Collection Improvement Act, 31 U.S.C. § 3701 et seq., requires EPA to periodically adjust its civil penalties for inflation. On December 31, 1996, February 13, 2004, and December 11, 2008, EPA adopted and revised regulations entitled "Adjustment of Civil Monetary Penalties for Inflation," 40 C.F.R. Part 19, to upwardly adjust the maximum civil penalty under the CAA. For each violation that occurs between March 16, 2004, and January 12, 2009, inclusive, penalties of up to \$32,500 per day may be assessed; and for each violation that occurs on and after January 13, 2009, penalties of up to \$37,500 per day may be assessed. 61 Fed. Reg. 69360 (December 31, 1996); 69 Fed. Reg. 7121 (February 12, 2004); 73 Fed. Reg. 75,340 (December 11, 2008). The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, and before January 13, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2009).
19. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. The Red Wing SWBF owns and operates a Small Class II MWC Unit at 1873 Bench Street, Red Wing, Minnesota.
22. The Red Wing SWBF has the capacity to combust approximately 96 tons of MSW per day. Therefore, the Red Wing SWBF is subject to the Small MWC FIP at 40 C.F.R. § 62.15160(a) and Table 4 of the Small MWC FIP.

23. On November 30, 2005, Pace Analytical Inc. (Pace Analytical) conducted three runs of Reference Method (RM) 29 on behalf of the Red Wing SWBF. The average cadmium emission concentration during the three runs was 0.17 mg/dscm @ 7% O₂. On January 3, 2006, Red Wing SWBF shut down because of the failed test. On January 25, 2006, Pace Analytical conducted three runs of RM 29 on behalf of the Red Wing SWBF. The average cadmium emission concentration during the three runs was 0.070 mg/dscm @ 7% O₂. On February 1, 2006, the Minnesota Pollution Control Agency (MPCA) allowed Red Wing SWBF to re-start operations.
24. Thus, EPA concludes that Red Wing SWBF violated 40 C.F.R. § 62.15160(a) by exceeding the cadmium standard set forth in Table 4 of the Small MWC FIP.
25. On January 25, 2006, Pace Analytical conducted three runs of RM 29 on behalf of the Red Wing SWBF. The average mercury emission concentration during the three runs was 0.097 mg/dscm @ 7% O₂. On February 14, 2006, Pace Analytical conducted three runs of RM 29 on behalf of the Red Wing SWBF. The average mercury emission concentration during the three runs was 0.258 mg/dscm @ 7% O₂. On March 9, 2006, Pace Analytical conducted three runs of RM 29 on behalf of the Red Wing SWBF. The average mercury emission concentration during the three runs was 0.0051 mg/dscm @ 7% O₂. Pace Analytical did not measure the reduction of potential mercury emissions during the January 25 and February 14, 2006, RM 29 tests.
26. On May 12, 2009, Pace Analytical conducted three runs of RM 29 on behalf of the Red Wing SWBF. The average mercury emission concentration during the three runs was 0.410 mg/dscm @ 7% O₂. On June 12, 2009, Pace Analytical conducted three runs of RM 29 on behalf of the Red Wing SWBF. The average mercury emission concentration during the three runs was 0.0071 mg/dscm @ 7% O₂. Pace Analytical did not measure the reduction of potential mercury emissions during the May 12 and June 12, 2009, RM 29 tests.
27. Thus, EPA concludes that Red Wing SWBF violated 40 C.F.R. § 62.15160(a) by exceeding the mercury standard set forth in Table 4 of the Small MWC FIP.
28. Pursuant to 40 C.F.R § 62.02(b)(2), the good air pollution control practice set forth in 40 C.F.R § 60.11(d) applies to the Red Wing SWBF.
29. On August 13, 2008, the MPCA received a citizen's complaint alleging that the Red Wing SWBF used its dump stack as part of its shutdown procedure. On September 12, 2008, the Red Wing SWBF agreed to cease its use of the dump stack during routine shutdown, and to use it only for emergencies such as breakdowns or malfunctions.

30. Thus, EPA concludes that prior to September 2008, Red Wing SWBF violated 40 C.F.R. § 60.11(d).

Civil Penalty

31. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and information that Red Wing SWBF has submitted, EPA has determined that an appropriate civil penalty to settle this action is \$27,000.
32. Red Wing SWBF must pay the \$27,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within 30 days after the effective date of this CAFO.
33. Red Wing SWBF must send the check to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

34. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Steven Kaiser, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

35. This civil penalty is not deductible for federal tax purposes.
36. If Red Wing SWBF does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
37. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Red Wing SWBF will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Red Wing SWBF will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.
39. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
40. This CAFO does not affect Red Wing SWBF's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 38 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.
41. Red Wing SWBF certifies that it is complying fully with the applicable requirements of the Small MWC FIP and 40 C.F.R. 60.11(d).
42. This CAFO constitutes an "enforcement response" as that term is used in "EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Red Wing SWBF's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
43. The terms of this CAFO bind Red Wing SWBF, and its successors, and assigns.
44. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
45. Each party agrees to bear its own costs and attorneys' fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

IN THE MATTER OF:

Red Wing Solid Waste Boiler Facility, Red Wing, Minnesota

U.S. Environmental Protection Agency, Complainant

12/21/10
Date

Michael D. Harris *for C.N.*
Cheryl L. Newton
Director
Air and Radiation Division

Red Wing Solid Waste Boiler Facility, Respondent

12/13/10
Date

John Howe
John Howe
Mayor
City of Red Wing

12/13/2010
Date

Kathy Seymour Johnson
Kathy Seymour Johnson
City Clerk
City of Red Wing

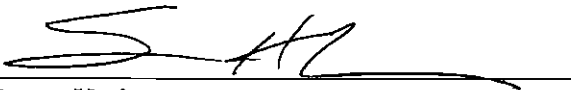
Red Wing Solid Waste Boiler Facility, Red Wing, Minnesota

Docket No. **CAA-05-2011-0013**

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

12-22-10
Date


Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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Protecting the environment is everyone's responsibility. Help EPA fight pollution by reporting possible harmful environmental activity. To do so, visit EPA's website at <http://www.epa.gov/compliance/complaints/index.html>.

In the Matter of the Red Wing Solid Waste Boiler Facility
Docket No. **CAA-05-2011-0013**

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, the original and one copy of the Administrative Complaint and the Consent Agreement and Final Order, docket number **CAA-05-2011-0013**. Further, I certify that I mailed correct copies of the Administrative Complaint and Consent Agreement and Final Order, in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:


Kevin Johnson
Stoel Rives LLP
33 South Sixth Street, Suite 4200
Minneapolis, Minnesota 55402

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

on the 27th day of December 2010.



Betty Williams
Administrative Program Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7666 5377